

**PLANNING AND ZONING COMMISSION
MINUTES
SPECIAL MEETING/PUBLIC HEARING/GENERAL MEETING
NOVEMBER 18, 2008**

Place: Auditorium
Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Conze, Spain, Grimes, Finke, Bigelow, Hutchison

STAFF ATTENDING: Ginsberg

RECORDER: Syat

Mr. Conze read the first agenda item:

PUBLIC HEARING

Special Permit Application #188-A/Site Plan, Darien Board of Education, Darien High School, 80 High School Lane. Proposing to install portable light units at the Darien High School Stadium field on a temporary basis. The subject property is located on the north side of High School Lane approximately 1,200 feet west of its intersection with Middlesex Road, and is shown on Assessor's Map #9 as Lots #80 and #81, R-2 Zone.

Mr. Conze opened the meeting by requesting that the audience remain civil. He then asked Mr. Ginsberg to read aloud Sections 1005 of the Darien Zoning Regulations relative to Special Permit standards. Mr. Ginsberg then read those aloud, and specifically noted that Sections 1005e, f, h and i are not applicable to this application.

Attorney Bruce Hill noted that this application has been submitted per Sections 405b and Section 1000 of the Darien Zoning Regulations. The proposal is extremely limited in scope and duration. This application is not for seven weeks. It is for temporary lights for the duration of the football season, which could be for another 10+/- days. Mr. Hill confirmed that this is not an application for permanent lights. It is not a precursor or test case. This is a standalone application. Time is of the essence. He understands the Commission's desire to expedite this matter. He then summarized by noting that this is for temporary lights for a limited duration.

Board of Education Chairman John Boulton thanked the Commission and staff for their efforts. Lights in this location have been a subject for the Board of Education for over two years now. They are trying to relieve the burden on the football program, because the season goes into late November. The varsity football team has qualified for the playoffs on December 2. The Special Permit will allow for more practice time. Mr. Boulton noted that at the November 12 Board of Education meeting, they agreed that at this time, permanent lights are not an open agenda item. A slide show in PowerPoint was then shown, entitled "Pilot Program Proposal DHS Portable Lights November 18, 2008". Mr. Boulton outlined the Goals and Benefits of the Pilot Program. He noted that the Board of Education may return to the Commission for a similar application in the future. He explained that football practice now runs until 5:45 PM.

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The second slide, entitled, Summary of the Pilot Program, noted that the proposed lights will allow the football team to use the entire field. The lights will be on until 7pm on November 29th (not 7:30 as originally proposed). There is no need for a variance or a zone change for this application. The proposals is for the lights to be used for about two weeks and a day. Mr. Boulton then summarized the fourth slide, entitled, "Proposed Schedule of Usage". He noted that this is not an expansion of the football practice schedule. He again confirmed that November 29th the lights will be on from 4pm to 7pm. He explained that no sound will be brought in. The proposal helps the athletes, and there is no commitment or request for beyond December 6, 2008.

At about 8:25 PM, Lou Gesualdi explained that the proposed light tower is the quietist in the industry. The sound is the same as an idling Suburban. There will be no back spill on the lighting. Mr. Brendan Thomas of United Rentals also confirmed that there will be no back spill or rear spillage on the lighting. The lights will be angled. There is a built-in generator, which sounds like a Suburban idling. There will be no noise issue. Mr. Guy Wisinski then showed on a PowerPoint slide the proposed location of the lights.

Superintendent of Schools Don Fiftal then reviewed his two-page Memorandum document dated November 18, 2008. This included guidelines 1-13 and he read them aloud. He again confirmed that on November 29th, the lights are proposed to be turned off at 7pm. Matt Wheelock and four other football co-captains read aloud a brief statement.

Mr. Spain then noted that he attended part of the football practice yesterday. He asked how high the existing upright was. Athletic Director John Keleher responded that the current light is at or above 22 feet above the ground. Mr. Hill then read aloud Section 405b of the Darien Zoning Regulations as follows:

- b. *Outdoor recreational uses and tennis courts. The lighting or illumination of recreational facilities is permitted provided that such lighting shall create no hazard or nuisance upon adjacent properties with reference to the following standards:*
 - (1) *The source of such lights shall be concealed from surrounding residential properties;*
 - (2) *All lighting shall be located and be of such design that no illumination shall be directed toward surrounding residential properties;*
 - (3) *No lighting facilities shall be mounted at a height greater than 20 feet above grade.*

Mr. Hill confirmed that all of the proposed lights will face toward the school. In response to a question, Mr. Hill noted that the current light pole is a re-creation of a light at the former Darien High School. He explained that the football team doing well necessitates the extra practice times. One Darien Junior Football League team has also been successful. The team has not practiced at other fields. Mr. Spain said that assuming approval by the Commission is there one contact name that can be provided for the neighbors. Mr. Hill said that they would provide one.

Mr. Hutchison asked that someone walk through the FCIAC requirements over time. Mr. Keleher responded that CIAC is a State-organization, which requires night playoff games. Mr. Hill added that there is now no proposal for games. The intent of Section 405 is the impact of the light. Other

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impacts from activities related to any lights are outlined within Section 1000 of the Regulations. There are no changes proposed to the uses that are now ongoing on the subject property. Mr. Conze asked what other fall sports there are. Mr. Keleher responded that all other fall sports have ended by mid-November. Only football goes beyond that time. Thus, there are no Title IX issues as a result of this request.

Mr. Ford Gardener of Old Stone Road said that he supports the football team, the football coach, and the subject application. Mr. David Morgan also supported the proposal. Mr. John Sini of Birch Road then referred to the 2006 Town Plan of Conservation & Development, and read aloud excerpts from it supporting the proposal. He then referred to the prior Mandatory Referral report on the permanent lights issued by the Commission earlier this year. Mr. John van der Kieft of 75 Hanson Road said that he supports the application but 1) he wants to be sure that this supersedes any prior proposal for the lights; and 2) that the lights will be turned off at 5:45 PM with the exception of a few nights. He noted that DJFL will be allowed to use the lights until 7:30 PM on two nights.

Mr. Boulton responded that they want to have the lights on until 7pm on November 29th. Relative to DJFL, he said that if the Planning and Zoning Commission were to approve the lights, there is one team that has a Sunday championship. They want to practice on two nights. Mr. Boulton noted that he could not rule out a subsequent application down the road.

Ms. Jane Wolcott of 14 Linda Lane said that in 2006, one light appeared. She has taken pictures of the existing light and submitted them for the record. The light is now not concealed. She is concerned about noise from the proposed generators which will power the lights. She says that sound carries from the fields to her property. She has no objection to approving this, but there are ongoing issues.

Mr. Paul Michalski of 371 Middlesex Road confirmed that he was not an opponent of this subject application. He said that the Commission was not presented with evidence of noise or light spillage, because this is a special case. Ms. Susan Bogle of 10 Linda Lane and Ms. Patti Baumgartner of 64 Hanson Road both spoke in favor of the proposal. They support it for a variety of reasons. They did not believe that it would set a precedent.

Mr. Conze then asked whether they could put lights at the 50 yard line to have less intrusion on the neighbors, relative to potential noise coming from the generators. Mr. Keleher responded that by putting the lights in the end zone, it gives the football team the full field to work with and a depth of practice. Mr. Conze said that he is always looking at ways to mitigate impacts. He noted that the request is for practice—and that practice may not require a full field. Mr. Hill reiterated that the lights will be used until 5:45 PM, except for one night. He said that this could be the subject of a “post-mortem”. Mr. Hill noted that to diminish the size of the practice field diminishes the intent.

Mr. Finke then asked about possible DJFL use on November 20 and 21. Mr. Wisinski responded that on those two days, DJFL could use them. However, at this time, they are more focused on the high school varsity football team. He said that there are more children in Junior football in Darien, than in any other Town in Fairfield County. Mr. Boulton noted the possibility that putting the temporary lights on the 50 yard line could have some impact on the existing turf field.

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Ms. Janice Lockhart of High School Lane asked if the lights could impact any drivers on High School Lane. Mr. Hill responded that the temporary lights are proposed for the far end zone, and will not blind drivers on High School Lane.

At about 9:40 P.M., Mr. Walter Raleigh of 345 Middlesex Road then spoke. He noted that the Superintendent's guidelines have been changed tonight. He then reviewed some of the features of the guidelines, including: 1) use for practices only; 2) no amplified sound; 3) lights at a maximum of 20 feet high, aimed away from the neighbors; 4) lights to be removed after the season; 5) weekday use only. If implemented as proposed, this should be acceptable to many neighbors. He asked what assurances the neighbors have on any future applications. Mr. Boulton then reiterated that "Permanent lights are not an open agenda item". Ms. Cathy Wildish of 187 Leroy Avenue said that she is totally for the lights.

There being no further questions or comments from Commission members, the public hearing was then closed.

GENERAL MEETING (time permitting)

At about 9:50 P.M., Mr. Conze read the first general meeting agenda item:

Discussion, deliberation, and possible decision regarding the following application:

Business Site Plan #221-A/Special Permit, Land Filling & Regrading Application #209, Darien Auto Group, 90 Boston Post Road. Proposal to construct an addition to the dealership's maintenance facility, modify the existing drainage system and perform related site development activities. The subject property is located on the southeast side of Boston Post Road approximately 200 feet west of the intersection of Boston Post Road and West Norwalk Road and is shown on Assessor's Map #32 as Lot #3 in the SB-E Zone. *DECISION DEADLINE: 12/24/2008.*

Mr. Bigelow made a motion to waive the reading of the draft resolution aloud. That motion was seconded by Mr. Hutchison and unanimously approved. Mr. Spain said that there are two issues: parking needs, and the drainage pipe. Both of these are fully covered within the resolution. Mr. Conze agreed that the biggest issue was the proposed replacement of the drainage pipe, and the maintenance thereof, including access to it. Mr. Hutchison noted the wording in the Resolution that addresses these issues. Mr. Spain then made a motion to adopt the resolution as drafted. That motion was seconded by Mr. Finke, and unanimously approved. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
November 18, 2008**

Application Number: Business Site Plan #221-A/Special Permit
Land Filling & Regrading Application #209

Street Address: 90 Boston Post Road
Assessor's Map #32 Lot #3

Name and Address of Applicant: Jacek Bigosinski

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And Applicant's Representative: PB Architects
277 Rowayton Avenue
Rowayton, CT 06853

Name and Address of Property Owner: Darien Auto Group
90 Boston Post Road
Darien, CT 06820

Activity Being Applied For: Proposal to construct an addition to the dealership's maintenance facility, modify the existing drainage system and perform related site development activities.

Property Location: The subject property is located on the southeast side of Boston Post Road approximately 200 feet west of the intersection of Boston Post Road and West Norwalk Road.

Zone: SB-E

Date of Public Hearing: July 29, 2008 continued to September 23, 2008 continued to October 21, 2008

Time and Place: 8:00 P.M. Auditorium (7/29); Room 206 (9/23); Room 119 (10/21) Town Hall

Publication of Hearing Notices

Dates: July 17 & 24, 2008
September 11 & 18, 2008

Newspaper: Darien News-Review

Date of Action: November 18, 2008

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
November 26, 2008

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 670, 850, 1000 and 1020 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds that:

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1. The applicant proposes to construct an addition to the dealership's maintenance facility, modify the existing drainage system and perform related site development activities.
2. At the July 29th public hearing, the matter was opened and immediately continued. No testimony or presentation was made. At the continuation of the public hearing on September 23, it was noted that the Nissan franchise is taking over the entire building that it currently shares with the Jaguar dealership at 1335 Boston Post Road. The Jaguar dealership will be moving to 90 Boston Post Road and will share that building and site with the existing Land Rover dealership. Rather than build a new building near the street, which would require many variances, the proposed addition to the existing building will not require any variances from the Zoning Board of Appeals. They will be adding service bays to the rear portion of the existing building and making the showroom area in front of the building slightly larger to accommodate both brands—Land Rover and Jaguar. The proposed garage doors into the new service bay will face east (away from the customer entrance) and it will be a one story addition for the service bays. The front façade of the existing building will be changed to accommodate both the Land Rover and Jaguar desired architectural features.
3. The Architectural Review Board (ARB) has reviewed the plans and had submitted a letter of approval dated September 17, 2008. That approval is hereby incorporated by reference.
4. The Darien Environmental Protection Commission granted approval of this application on September 18, 2008 as part of EPC #54-2008. That approval is also hereby incorporated by reference.
5. The main issue brought up during the public hearing was that the applicant proposes to construct the building addition over an existing storm drainage pipe that now travels through the parking lot. That was a major concern expressed by both the Public Works Department via their referral comments, and by the Commission at the public hearing.
6. In response to those concerns, John Martucci, project engineer, said that the existing storm drainage pipe has been located under the parking lot since the facility was built in 1995/1996. He said that the proposed addition will require the relocation of some underground storm drainage structures, but it is not practical to relocate the currently existing 30 inch diameter pipe that carries storm water runoff from the Boston Post Road and routes it through the adjacent Bertucci's site to the north, and the subject property. Mr. Martucci explained that on previous maps the pipe was shown as being 24 inches in diameter, but those maps have been corrected to indicate that the pipe is actually 30 inches in diameter. He mentioned that approximately 28 feet of the existing pipe would be covered with the proposed addition to the building. The contractor will need to have that portion of the pipe carefully excavated and then inspected to determine what special provisions will be necessary in the foundation construction to avoid adding any pressure onto the pipe. The pipe is owned by and the responsibility of the private property owner.
7. Mr. Martucci said that the pipe is also 10 feet deep in the ground and it would be very easy for the foundation of the building design to span the width of the pipe to make sure that the foundation and building addition do not add any pressure to the pipe. He said that replacing the pipe would not be likely, and even if it was, the special spanning foundation would allow it to

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be replaced if it needs to be. He said that the pipe drains an uphill area of approximately 60 acres of land located upstream of the Boston Post Road. Mr. Martucci said that if the existing pipe needed to be replaced at some point in the future, they could do so by using a box culvert or an oversized pipe or they could later retrofit a larger pipe by jacking it under the building addition. Mr. Bigosinski added that it would be very easy to design the foundation to span the pipe area with the special spread footing so that there would be no problem creating any pressure on the existing pipe and no problem if the pipe ever had to be replaced.

8. During the October 21 public hearing, the applicant noted that a 36" RCP Class V pipe is now proposed to allay any fears about the required size of the pipe. This would replace the existing portion of pipe, and increase its size from 30" to 36".
9. During the public hearing, the Commission noted their concern about the availability of parking on the site for customers and new vehicles in stock. The adding of another vehicle dealership will create need for more parking. The applicant responded that the operators of the site do have an agreement with the operators of the adjacent Bertucci's restaurant property to the north. This agreement will allow employees to park on the Bertucci site during the day when the restaurant is not very busy. Some vehicle inventory is also kept at an off-site location (the Double Tree Hotel) in Norwalk.
10. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
11. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
12. The location and size of the use, the nature and intensity of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
13. The location and nature of the proposed use, the size and height of the building are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
14. The elements of the Site Plan, submitted as part of this application, accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Business Site Plan #221-A/Special Permit and Land Filling & Regrading Application #209 are hereby approved subject to the foregoing and following stipulations, modifications, and understandings:

- A. Construction and renovation shall be in accordance with the plans, as required to be revised herein, entitled:

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- Zoning Location Survey #90 Boston Post Road prepared for Land Rover of Darien, by William W. Seymour & Associates, dated June 6, 2008 and last revised Aug. 15, 2008.
 - Addition and Alteration to: Jaguar and Land Rover of Darien, 90 Post Road, by PB Architects, dated 3/04/2008 and last revised 7/29/2008, Drawings No. TS, SP, A-0 through A-3 and A-11 through A-13.
 - Stormwater Management Plan prepared for Land Rover of Darien, 90 Boston Post Road, by LBM Engineering, LLC, scale 1"=30', dated August 19, 2008 and last revised 9/23/2008.
- B. Final plans shall be submitted showing the replacement of the existing 30 inch RCP with a 36 inch Class V pipe for the area underneath the proposed building addition extending from the existing manhole to the existing headwall. The proposed building foundation within five (5) feet of the pipe shall be designed to minimize pressure on the pipe. A note shall be placed on the plan stating these requirements. Other notes that shall be added to the plans: "The drainage pipe does not change the responsibilities of the property owner. The pipe must be cleaned and inspected annually. The Town has the right to come onto the subject property, inspect the pipe, and if necessary, perform maintenance work. Any work performed can be charged back to the property owner."
- C. During the regrading and site work, the applicant shall utilize the sediment and erosion controls illustrated on the plan referred to in the "Stormwater Management Plan" (in Condition A, above), and any additional measures as may be necessary due to site conditions. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized. A note shall be added to the final plan stating that "All functioning drainage inlets shall be protected from sediment with staked hay bales and filter fabric."
- D. The applicant shall install the drainage system as shown on the submitted "Stormwater Management Plan" (in Condition A, above). The property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent property(ies) or the adjacent streets. If such problems do become evident in the future, the owner(s) of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- E. Prior to the issuance of a Certificate of Occupancy for the proposed additions and alterations to the building, a drainage maintenance plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Darien Land Records. The maintenance plan shall require the property owner and all subsequent property owners of 90 Boston Post Road to maintain the drainage facilities per the maintenance plan.
- F. A final "as-built" survey is hereby required to certify that the site development is in compliance with the approved plans and the Zoning Regulations. A Professional Engineer shall certify in

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writing prior to the issuance of a Certificate of Occupancy that all work has been properly completed in accordance with the approved plans.

- G. The granting of this Business Site Plan/Special Permit does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to, review and action by the Darien Fire Marshal prior to approval of a Zoning or Building Permit, and a possibly a Street Opening/Curb Cut Permit from the State of Connecticut DOT.
- H. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- I. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (November 17, 2009). This may be extended as per Sections 1009 and 1028.

All provisions and details of the plan, as required to be revised herein, shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. All completed requirements and materials, including revised plans, shall be submitted to the Planning and Zoning Department within 60 days of this action or this approval shall become null and void. A Special Permit form shall also be filed in the Darien Land Records by the applicant or property owner within 60 days of this approval.

At about 9:55 P.M., Mr. Conze read the next general meeting agenda item:

Discussion, deliberation, and possible decision regarding the following matter if the public hearing has been closed:

Special Permit Application #188-A/Site Plan, Darien Board of Education, Darien High School, 80 High School Lane. Proposing to install portable light units at the Darien High School Stadium field on a temporary basis. The subject property is located on the north side of High School Lane approximately 1,200 feet west of its intersection with Middlesex Road, and is shown on Assessor's Map #9 as Lots #80 and #81, R-2 Zone.

Mr. Spain said that there is a need for the Commission to see a draft resolution in writing. He noted that this is a limited proposal, and a special situation. The details presented tonight appeared to be satisfactory. He was confident that the lights will be closely monitored. Ms. Grimes said that this should be spelled out within the Resolution. Mr. Spain suggested that at the end of the trial period, that the Board of Education position the two lights in the end zone at the 50 yard line of the football field to analyze any sound differences. He added that if the lights did not have diesel generators, this would be less of a problem.

Mr. Bigelow said that he is in favor of the proposal. This will be an excellent opportunity to learn a lot. The information gathered on the noise, angle of the lights, and the management is helpful. This will be a short pilot program. If it were a longer pilot program, there could have been other

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stipulations included by the Commission. As proposed tonight, however, it appears to be acceptable.

Mr. Conze said that within the Resolution, it should be recited that the use is a Special Permit use within a single-family residential zone. He noted the recitation in the 2006 Town Plan of Conservation & Development that the overall goal is to preserve the residential character of the Town. The Board of Education and the neighbors must co-exist. It is incumbent upon the Board of Education to manage and administer the lights. Mr. Spain added that the Board of Education stepped up as the applicant, and presented the application in the right way.

Mr. Finke suggested that the Board of Education have a designated point person with a phone contact. Any calls to that person should be logged. Mr. Conze suggest that the point person be Don Fiftal, the Superintendent of Schools, and the phone number should be a cell phone number. Mr. Finke also noted that the existing "grandfathered" light must be adjusted to be at or below twenty feet high. Mr. Spain said that it should be based upon a reliable measurement.

The Commission then reviewed their schedules, and agreed to meet at 8:45 AM in room 213 of Town Hall on Thursday, November 20th. Mr. Ginsberg explained that they could not meet on Wednesday the 19th, since all meetings, except for emergencies, must have at least 24 hours notice. Mr. Hutchison said that the Resolution should reference the CIAC regulations for lights. Mr. Spain specifically noted that there is no different use being proposed or authorized. That is why this is an easy decision for the Commission. Mr. Conze again noted the need for the maintenance of the residential character.

Mr. Hutchison then also suggested that all of the parties return in the near future with an update on the trial. Mr. Conze suggested requiring that the Board of Education prepare a written "post-mortem" report, to be discussed at a Planning and Zoning Commission meeting in early 2009. Mr. Hutchison said that he would like to have some input from the neighbors as well at that meeting. Mr. Bigelow suggested that said "post-mortem" report from the Board of Education include information on what they would have done differently.

Mr. Finke asked the other Commission members whether the DJFL practices on November 20 and 21 will be permitted. Commission members noted that their action on the morning of the 20th may allow such.

Mr. Ginsberg was then instructed to draft a resolution and e-mail it to members prior to Thursday morning's meeting. There being no further business, the meeting was adjourned at 10:10 P.M.

Respectfully submitted,

Jeremy B. Ginsberg
Director of Planning & Zoning